IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5584 OF 2003

Kishore Dadasaheb Jamadar ... Petitioner

Versus

The Sangli Bank Ltd. ... Respondent.

Mr. A.M. Kulkarni for the petitioner.
Mr.Chirag Mody, instructed by M/s. RMG Law Associates, for the respondent.

CORAM: **KSHITIJ R. VYAS, C.J.** &
DR. D.Y. CHANDRACHUD, J.

DATE: **MARCH 14, 2006**.

P.C.

The petitioner has challenged the order dated 30th June, 2003, passed by the learned Chairperson, Debts Recovery Appellate Tribunal, Mumbai, in Miscellaneous application No. 127 of 2002 in Appeal No. 53 of 2003, whereby the Tribunal directed the petitioner to deposit with the respondent-Bank a sum of Rs. 12 lakhs within eight weeks from the date of the order and the Bank was permitted to appropriate the said amount towards their claim, subject to the outcome of the appeal. The Tribunal clarified that if the petitioner failed to deposit the said amount within a prescribed time, the appeal shall be rejected without further recourse. Stay to the recovery proceedings till

the next date was also ordered by the Tribunal.

2. This Court on September 01, 2003, while issuing the notice to the respondent, recorded the statement of the counsel for the petitioner to the effect that the petitioner is ready and willing to deposit the entire amount of Rs. 6 lakhs. This Court has further recorded the statement of the learned counsel for the petitioner that it may not be possible for the petitioner to deposit the entire amount in lumpsum but the petitioner intends to deposit the said amount of Rs. 6 lakhs as per the order passed by the Debts Recovery Appellate Tribunal.

3. It is stated on behalf of the petitioner by his counsel that in pursuance of the said order, the petitioner has deposited Rs. 6 lakhs. It appears that the matter was not taken up for hearing thereafter. Today, when the matter is called out, learned counsel appearing for the petitioner has stated that the petitioner by this time has deposited total amount of Rs. 12 lakhs. In our opinion, as per the order passed by the Tribunal, the petitioner was required to deposit the amount within the stipulated period i.e. within eight weeks from 30th June, 2003. On non-compliance of the said order dated 1-5-2003 technically, the appeal preferred by the petitioner stood rejected.

4. However, considering the fact that the petitioner has deposited by this time Rs. 12 lakhs even at such a belated stage, we are inclined to consider the request made by the learned counsel that an opportunity be given to the petitioner to present his case before the Tribunal.

5. Considering the facts and circumstances of the case, the following directions are given to serve the ends of justice.

(i) The appeal filed by the petitioner before the Debts Recovery Appellate Tribunal shall be restored on file on the condition that the petitioner shall deposit over and above the sum of Rs. 12 lakhs, a further amount of Rs. 3 lakhs as per the say of the petitioner within four weeks from today.

(ii) On deposit of the said amount, the respondent-Bank will be at liberty to appropriate the said amount towards its dues, subject to the result of the Appeal.

(iii) It is made clear that on failure to deposit Rs. 3 lakhs, over and above the sum of Rs. 12 lakhs as ordered by the Tribunal, the order dated 30th June, 2003, passed by the Tribunal shall remain as it is.

6. With the above directions, the petition is disposed of.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.